United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

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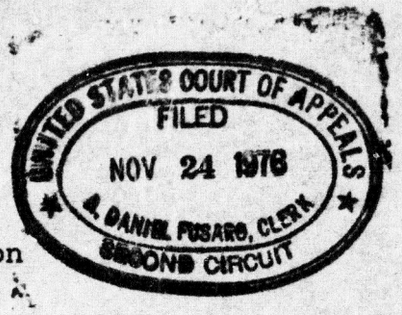
FOR THE SECOND CIRCUIT



MILDRED GALFAND, on behalf of herself and on behalf of AMERICAN INVESTORS FUND, INC.,

Plaintiff-Appellee and Cross-Appellant,

v.

CHESTNUTT CORPORATION

Defendant-Appellant,

and

AMERICAN INVESTORS FUND, INC.,

Nominal Defendant.

Docket Nos.
76-7156
76-7170

B P/S

PETITION OF DEFENDANTS FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

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Plaintiff-Appellee and Cross-Appellant,

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Docket Nos. 76-7156 76-7170

PETITION OF DEFENDANTS FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

Petitioner Chestnutt Corporation prays that the judgment entered upon the decision herein on or about November 4, 1976, be vacated; respectfully suggests rehearing EN BANC upon supplemental briefs; and further prays that the Securities and Exchange Commission be directed to participate both upon brief and upon oral argument. It is respectfully submitted that the panel has overlooked, misapprehended, and thoroughly misunderstood the matters set forth below.

1. While the panel recognized that the trial court employed a legal standard expressly rejected by the Supreme

Court, it is submitted that the error was compounded, especially by approval of the view that inclusion of a true statement at the instance of the Securities and Exchange Commission rendered the proxy statement false and misleading.

2. The admittedly wrong standard of law induced the trial court to make findings of fact, including findings of fact that combine both fact and law which are not merely clearly erroneous, but also without any basis of fact in the record and devoid of support on their very face. Further, despite the panel's acknowledgement of the wholly incorrect and indeed misleading standard of law, the panel compounded the error by making additional findings, patently unsupported, wholly conjectural and contrary to the basic facts.

3. Stockholder action has been taken in three successive years to make prospective conformance with state regulation. Both the trial court and the panel referred only to a single paragraph of the four paragraphs in the proxy statement (Ex.2, pages 6-7) but totally omit reference to the preceding two pages 4 and 5 which refer to the existing agreement, including the statement on page 5: "Total net assets of the Fund were $150,102,469 on June 14, 1973."

4. It is axiomatic that findings of fact that are induced by an erroneous view of the law are not binding, nor are findings that combine both law and fact when there is error as to the law. United States v. United States Gypsum Company, 333

U.S. 364, 394, 685 Ct. 525 (1948).

5. All shareholders, prior to the receipt of the proxy statement had received the 1972 Annual Report (Ex.3) and the 1973 Prospectus dated April 1973 (Ex.1), as well as a first quarterly report , all of which showed complete, audited financial statements of the Fund disclosing the Fund's total net assets at year end 1972 and the 1973 first quater, just as they were fully apprised of the $150,102,469 value on June 14, 1973 by the proxy statement itself.

The Board of Directors at their first of two meetings to discuss the advisory agreement, on May 21, 1973 discussed "The impact upon such an expense limitation of the decline in net assets...".

The paragraph from the minutes (Ex.6) read:

> "A discussion of the Investment Advisory Agreement was introduced with a statement by George A.Chestnutt, Jr., regarding the maximum expense ratio which the Fund had adopted as a condition of its registration in several states. The impact upon such an expense limitation of the decline in net assets was discussed. The Directors instructed counsel for the Fund to discuss the problem of the maximum expense ratio with the securities commissioners of the various states requiring a maximum expense ratio and report back to the Board. Further action on the Investment Advisory Agreement was put off until a later date."

In the light of the minutes, in the light of the inundation of stockholders with detailed, audited financial

statements, there can be no basis for the conclusions of failure to discuss or disclose information as to decline in net assets--to the directors who were informed weekly--or to the shareholders who were given the actual net assets in the flood of information.

That the directors discussed the "impact upon such an expense limitation of the decline in net assets" precludes the correctness of the conclusion to the contrary (slip op. 417, first full paragraph), just as does the instruction to counsel to discuss the matter with California and the two weeks delay until June 5, 1973 (Ex.8) before approval of the agreement and the direction to submit it to shareholders in the proxy statement.

6. The directors knew of the decline from $206 million to about $150 million, which they knew would decrease the advisers quarterly fee by $1,000 for each million dollar decline, or one-tenth of one percent (annual equivalent of 0.4%). Thus, the outside directors, one of whom is an engineer, two of whom are financial executives with Masters degrees (and one of whom formerly audited investment companies and advisers) and one of whom has a law degree, all knew that unless the value went up, the quarterly fee would be $66,000 less than the fourth quarter of the prior year, or $264,000 less on an annual basis.

Nevertheless, the panel not merely repeated a flat and clearly erroneous finding below, but added one of its own referring to "substantial income despite recent unfavorable trends." (Slip op. 417).

As noted, page 12 of our main brief, the adviser lost $248,000 in 1973, plus an estimated loss of $180,000 to $200,000 in 1974. The advisers net current assets of merely $269,957 at December 31, 1972, could hardly reassure directors!! The following balance sheet (page 11 of the proxy statement) of the adviser shows that its principal asset was real property of a value of $777,059, representing more than the thirteen years of retained earnings of $759,564 which the panel (note 13) mistakenly called "current assets" as did the court below. The real property is the physical facility furnished the Fund under the agreement.

The reference to "Cassandra" is fitting--it was Apollo's curse that her true prophecies should not be believed. That balance sheet follows.

The following statement is not a balance sheet of American Investors Fund, Inc., but is a consolidated balance sheet of the investment adviser, Chestnutt Corporation, as required to be included in the Proxy Statement by Rule 270.20a-2(a)(9) of the regulations issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

CHESTNUTT CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
December 31, 1972

ASSETS

Current Assets:	
Cash	$ 5,840
Marketable securities, at cost which approximates market value	282,196
Accounts receivable:	
American Investors Fund, Inc. (Note 2)	281,930
Other (including federal income tax refunds due of $35,169)	76,382
Receivable from officer (Note 8)	100,000
Prepaid expenses	8,511
Total current assets	754,759
Property and Equipment, at cost:	
Land	388,477
Buildings	547,539
Leasehold improvements	11,800
Furniture, fixtures and equipment	268,242
	1,216,058
Less—Accumulated depreciation and amortization (Note 1)	438,999
	777,059
Future Income Tax Benefits (Note 1)	35,905
Goodwill, Copyrights, Methods, Calculations and Procedures	1
	$1,567,724

LIABILITIES AND SHAREHOLDERS' EQUITY

Current Liabilities:	
Current portion of long-term debt (Note 3)	$ 26,881
Notes payable to bank—interest at ¼% above the prime lending rate	264,000
Accounts payable	66,730
Accrued liabilities	56,175
Estimated taxes on income (Notes 1 and 5)	19,204
Deferred income (Note 1)	51,812
Total current liabilities	484,802
Long-Term Debt (Note 3)	317,055
Shareholders' Equity (Note 4):	
Common stock, without par value: 250,000 shares authorized, 189,000 shares issued	14,463
Retained earnings	759,564
	774,027
Less—408 shares of common stock in treasury, at cost	8,160
	765,867
Commitments and Contingent Liabilities (Notes 6 and 7)	
	$1,567,724

7. Certain additional plain errors should be noted.

a) The adviser did not "[receive] quarterly reimbursement of its expenses."(413) The adviser paid its own expenses.

b) There is no contention as to "Inflation simultaneously was causing a rapid increase in the adviser's expenses." (414) Nothing proposed or done related to the adviser's expenses.

c) Small shareholder redemption was effective September 20, 1974--not during any period covered by this suit, and the amount of $1,359,940 would simply reduce the future quarterly fees by some $1,360. Thus, there was no "ominous conjunction" that "led" Chestnutt. (414).

d) Since this case does not involve the advisers expenses, the only data important was prospective income of the adviser--which the outside directors knew would depend on the value at June 30, September 30 and December 31. They knew the total assets--each week--and there was no magic piece of paper, or ad hoc computation which could have "suppl[ied] information sufficient to enable the Fund's Board to evaluate..." The directors had all existing information sufficient to make a recommendation to shareholders for a reasonable novation of the unavoidable overhead expenses under the contract in the future. (418)

8. The proxy statement (Ex.2) is annexed hereto. We submit it must be considered in its entirety, especially all four paragraphs considered by Judge Broderick, and not simply the single paragraph considered by the court below under an erroneous standard of law.

Even so, the reasonable standard of TSC Industries v. Northway, _____U.S._____, 48 L.Ed. 757 (1976) appears to compel reversal when attention is directed to the proxy language single sentence:

"...however, the higher allowable expense ratio limitation would benefit the Adviser by reducing the risk that some or all of the advisory fee would have to be reimbursed to the Fund..."

Accordingly, it would appear that the Court en banc should consider this most important proxy case and whether it is proper to conclude that there was no "...indication whatever that a refund was even a remote possibility, under any set of circumstances, in 1973 and 1974..." (421).

The true statement of actual net assets of $150 million, the plethora of reports furnished shareholders and common experience must raise considerations meriting full review with the views of the SEC. The final sentence on page 6: "However, no assurance can be given that the annual expense ratio will in fact be at a level less than 1-1/2% of average net assets" must be read in conjunction with the true sentence injected by the SEC, the true statement of net assets, and the true statement that the amendment would "reduc[e] the risk that some or all of the advisory fee would have to be reimbursed to the Fund..."

The shareholders were told about "benefit" to the adviser, "risk" reduction, "reimburs[ment] to the Fund," the formula and the most recent net assets. The shareholders must know about inflation. Surely, management cannot be charged with inventing inflation and successfully concealing the invention from other directors and the shareholders--who now three times in successive years have approved the same formula.

9. Annual reports of the Fund, which of course all of the directors had received, showed that from 1967 to 1972:

> "Total expenses, excluding the advisory fee, went from $508,340 in 1967 to $865,010 in 1972, an increase of 70%, while net assets declined by 15%. These figures speak for themselves." (Exhibit B, page 3)

These data showed that the transfer agent fee had gone up 127% and the custodial fee 32% (both paid to The Bank of New York), and printing, stationary and postage for shareholders' reports had gone up 136%. This had occured while net assets declined by a mere 15%. Judge Broderick quoted this information (A--25) just as he quoted all four paragraphs in the proxy statement. The Court below ignored this point entirely, as did the panel. The Court below also ignored the stipulated fact (¶26,A-37) that the per share net asset value of the Fund over the years had increased by 116.5%, or three times as much as the increase of 38.4% in the Dow Jones Industrial average over the same number of years.

Thus, taking into account undisputed basic facts "the primary component of the rebate formula" was not as the panel concluded--"declining Fund assets" (421). Rather, despite the Fund's extraordinary investment success and special concern for investors so small tht most Funds would not even consider them, and no broker would take such an account, the increase in the past five years of 70% in unavoidable expenses caused appropriate consideration by the directors at separate meetings, two weeks apart, to conform the contract to what must be deemed to be the reasonable standard of regulatory authorities--<u>as to the future.</u>

Nothing was taken away from anybody.

Since the shareholders in three successive years have approved in their annual meetings such expense ratio limitations, the legal conclusion must be that "an avalanche of trivial information" such as a detailed breakdown of postage, printing, bank charges, etc., which are required by law and cannot be squeezed by the most efficient management, would not have "assumed actual significance in the deliberation of the reasonable shareholder" who already had in his physical possession financial reports of past years, the latest quarterly report, and the proxy statement itself, which stated the total net assets of the Fund only a few days before.

10. Holders of the 32,484,534 Fund shares outstanding May 30, 1973 (p.2,proxy statement), who had benefitted from such substantial long term appreciation, would hardly appear likely to attribute "actual significance" to a prospective change in future expenses so small that under no conceivable set of circumstances could it amount to as much as a penny a share--<u>even if the adviser had forfeited its entire fee for the first quarter of 1973 of $284,000.</u> (415,note 7)

An amount too low to be taken into account for the SEC's accounting Regulation purposes (or for purposes of sale and redemption of shares) cannot alter the "total mix" or assume "actual significance" in the mind of a reasonable shareholder, where the expert judgment is that expenses of an investment company

"...need not be so reflected if cumulatively, when netted, they do not amount to as much as one cent per outstanding share." (Reg.§270. 2a-4b, 17C.F.R. §270.2a-4b)

What the SEC can expressly exempt from reporting by regulation cannot alter the "total mix" for a reasonable shareholder, as a matter of law.

C O N C L U S I O N

For all the foregoing reasons and those set forth in our briefs, it is respectfully submitted that the petition should be granted.

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GREENWICH, CONNECTICUT 06830
Phone: (203) 661-5010

NOTICE AND PROXY STATEMENT

Notice of Annual Meeting of Shareholders to be held July 17, 1973

To the Shareholders:

PLEASE TAKE NOTICE that the annual meeting of the shareholders of AMERICAN INVESTORS FUND, INC. will be held on Tuesday, July 17, 1973, at 10:30 o'clock A.M. in the New Orleans Room at the Showboat Inn, 500 Steamboat Road, Greenwich, Connecticut for the following purposes:

1. to elect eight directors;
2. to consider and act upon a proposal to approve or disapprove the terms of a new Investment Advisory Agreement, as set forth in the enclosed Proxy Statement;
3. to ratify or reject the selection of Price Waterhouse & Co. as independent accountants of the Fund for the year 1973; and
4. to transact such other business as may properly be brought before the meeting.

Only shareholders of record at the close of business on May 30, 1973 are entitled to notice of, and to vote at, the Meeting.

Shareholders are requested to specify their choices, date and sign the enclosed proxy and return in the reply envelope to which no postage need be affixed if mailed in the United States.

By order of the Board of Directors.

June 21, 1973

DOUGLAS M. CRAM,
Secretary.

PROXY STATEMENT

This Proxy Statement dated June 21, 1973 is furnished to shareholders of AMERICAN INVESTORS FUND, INC. in connection with the solicitation of proxies to be used at the annual meeting of shareholders of the Fund. This meeting will be held on Tuesday, July 17, 1973, at the time and place and for the purposes set forth in the accompanying Notice of Annual Meeting of Shareholders. The solicitation is made by the management of the Fund and the cost of solicitation will be borne by the Fund.

If the enclosed form of proxy is executed and returned, it may nevertheless be revoked at any time before it is exercised, either by the execution of a new proxy or by voting in person at the meeting. The shares represented by the Proxy, if not limited to the contrary, will be voted for the election of directors and in favor of proposals 2 and 3. If a choice is indicated, the shares will be voted in accordance with the specifications so made.

The number of shares of Capital Stock of the Fund issued and outstanding, as of May 30, 1973, was 32,484,534. Each share is entitled to one vote. Only shareholders of record at the close of business on May 30, 1973 will be entitled to vote at the meeting.

Election of Directors

Unless instructed to the contrary, the proxy will be voted for the election of the following directors to hold office until the next annual meeting and until their respective successors have been elected and qualified:

Name, Principal Occupation or Employment	Year First Became Director	Shares Owned Beneficially, Directly and Indirectly 6/15/73
George A. Chestnutt, Jr., President of the Fund; President of Chestnutt Corporation (Investment Adviser to the Fund)	1957	28,000*
John Currier, President, Formfit Rogers Co., women's apparel manufacturer	1962	843
Frank G. Fowler, Jr., Secretary and Treasurer of Fowler Engineering Corp., municipal engineers and title surveyors	1962	278
Warren K. Greene, Vice President of the Fund; Vice President of Chestnutt Corporation; President of Chestnutt Management Corporation, investment counselling subsidiary of Chestnutt Corporation	1966	400

Name, Principal Occupation or Employment	Year First Became Director	Shares Owned Beneficially, Directly and Indirectly 6/15/73
Clendon H. Lee, Attorney and Partner, Rogers Hoge & Hills; Director, Chestnutt Corporation; Counsel to American Investors Fund, Inc. and Chestnutt Corporation	1973	620*
Stanley Law Sabel, Director and Consultant of Chestnutt Corporation	1957	4,057*
William A. Semmes, Retired	1969	100
Eugene A. Ulrich, Assistant Controller, American Airlines	1971	180

NOTE:

* Including 8,000 shares owned by Mr. Chestnutt's wife, Sara M. Chestnutt, and 1,859 shares owned by Mr. Sabel's wife, Elizabeth C. Sabel, including two trusts of which she is trustee and has reversionary interests, and including 284 shares held by members of Mr. Lee's family but excluding 3,010 shares in trusts of which Mr. Lee is a trustee and in one of which trusts Mr. Lee has an undetermined contingent interest.

All of the nominees are now Directors of the Fund, and, except for Clendon H. Lee, were elected by a vote of security holders at the last meeting, held on July 18, 1972, for which proxies were solicited. Clendon H. Lee, elected to fill a vacancy existing on the Board of Directors at a meeting of the Board on May 21, 1973, is engaged in the practice of law in New York City as a member of Rogers Hoge & Hills, legal counsel to the Fund, and has been a director of the Adviser and its predecessor for 10 years. Prior to 1969 and for a number of years Mr. Lee was a member of O'Connor & Farber which also acted as counsel to the Fund in various matters. In the event that any of the above nominees should be unable to serve by reason of death or other unexpected occurrence, those who shall act as proxies will vote the proxy according to their best judgment.

During 1972 the Fund paid directors' fees to its directors and officers aggregating $10,750. Sutton and Sabel, of which Stanley Law Sabel, a director of the Fund, is a partner, received $12,000 during such period for legal services.

Clendon H. Lee, a director of and counsel to the Fund, is a partner in the firm of Rogers Hoge & Hills, which firm received $29,600 for legal services performed in 1972.

Securities of the Investment Adviser

The Manager-Adviser, Chestnutt Corporation, has outstanding $130,600 of 6% Seria Income Bonds and 188,592 shares of Common Stock as of May 31, 1973. George A. Chest nutt, Jr. owns 88,885 shares (47%) of Common Stock. Stanley Law Sabel owns $22,000 principal amount (17%) of Bonds and 30,869 shares (16%) of Common Stock. George A. Chestnutt, Jr. and Stanley Law Sabel as trustees of a trust created on April 4, 1965 for members of Mr. Chestnutt's family and of which he is remainderman, hold $34,000 principal amount (26%) of Bonds. John Currier owns $2,500 principal amount (2% of Bonds, and 2,200 shares (1%) of Common Stock. Warren K. Greene owns 1,053 shares (1%) of Common Stock. Frances C. Lee, the wife of Clendon H. Lee, a director of the Fund, owns 1,890 shares of Common Stock (1%) and $1,600 of bonds (1%). G. Peter Mumbach owns 237 shares (0.1%) of Common Stock. Vilas & Hickey received $26,623 in brokerage commissions from the Fund in 1972, and the wife of a registered representative of such firm owns $8,000 principal amount (6%) of Bonds and 11,970 shares (6%) of Common Stock. In addition, pursuant to the Chestnutt Corporation Stock Option Plan adopted in 1969, the following officers of the Fund hold options covering the shares set forth after their names: Warren K. Greene (4,000), G. Peter Mumbach (500), and Douglas M. Cram (200). As owners of securities of the Manager-Adviser, Chestnutt Corporation, George A. Chestnutt, Jr., Stanley Law Sabel, John Currier, Warren K. Greene, Clendon H. Lee, G. Peter Mumbach and Douglas M. Cram have an interest in the Manager-Adviser and in the proposed new Investment Advisory Agreement referred to under "Approval of the Terms of New Advisory Agreement."

Information Pertaining to Investment Adviser and Present Investment Advisory Agreement

The Fund entered into its present advisory agreement with Chestnutt Corporation, 88 Field Point Road, Greenwich, Connecticut, following approval of the agreement by the shareholders at the Annual Meeting held on July 18, 1972. George A. Chestnutt, Jr. is President and principal executive officer of Chestnutt Corporation and Warren K. Greene is Vice President. George A. Chestnutt, Jr., Stanley Law Sabel, Warren K. Greene and Clendon H. Lee are the Directors of Chestnutt Corporation; the address of Messrs. Chestnutt and Greene is 88 Field Point Road, Greenwich, Connecticut. The principal occupation of Clendon H. Lee is general practice of law; his address is 90 Park Avenue, New York, New York 10016. Stanley Law Sabel is retired but continues as a Consultant and Director of Chestnutt Corporation and as a Director of the Fund. His address is 101 Palm Drive, Saint Simons Island, Georgia 31522. The advisory agreement is in effect for two years from September 1, 1972, unless cancelled by either party on 60 days' notice, or superseded by the proposed new agreement.

The Fund's Manager-Adviser, Chestnutt Corporation, owns and occupies an office building at 68 Field Point Road, Greenwich, Connecticut, where it provides office space and related services to the Fund pursuant to the Investment Advisory Agreement between the Fund and Chestnutt Corporation. Chestnutt Corporation was incorporated in the State of Connecticut in 1965, and succeeded the prior Investment Adviser of the Fund in 1966. However, personnel and equity ownership of Chestnutt Corporation is substantially similar to that of its predecessors, who have managed and promoted the Fund since its inception in 1957. Chestnutt Corporation is the publisher of American Investors Service, a technical weekly market service. Chestnutt Management Corporation, a wholly-owned subsidiary of Chestnutt Corporation, manages individual and institutional investment accounts.

The Adviser contemplates diversification of its business activity into fields promising a rate of return on invested capital commensurate with the risks being assumed. The Adviser has the opportunity to acquire from Cascade Airways, a commuter airline operating in the Spokane-Seattle-Portland area, not less than 80% of its capital stock. The President of the Adviser currently holds a 49% interest in Cascade Airways and his son owns 14%. Such a transaction, if entered into, would be subject to approval of the shareholders of the Adviser. As a step toward such acquisition, the Adviser has made a secured loan to its president (see note 8 to Consolidated Balance Sheet, p. 15) of $100,000 in fiscal year 1972, plus an additional $95,000 since that date, which funds have been advanced to or applied for the benefit of Cascade Airways. The Adviser's President is also the guarantor of two leases of aircraft to Cascade.

The Investment Advisory Agreement provides that it cannot be amended, assigned or pledged and shall automatically and immediately terminate in the event it is amended, assigned or pledged. The Agreement provides for fees, calculated on the basis of net assets, determined quarterly which on an annual basis amounts to 0.8% of the first $50 million of net assets of the Fund, 0.6% of the next $50 million, 0.4% of the next $200 million, 0.35% of the next $200 million, and 0.3% on net assets in excess of $500 million. Total net assets of the Fund were $150,102,469 on June 14, 1973. The annual fee is not more than an amount which will result in total charges per annum to the Fund, inclusive of the fee of the Investment Adviser (but exclusive of interest and taxes), of 1% of the value of the Fund's average monthly net assets for any year. The Adviser is required to render research, statistical, and advisory services to the Fund; to make specific recommendations based on the Fund's investment requirements; to provide office space and all necessary light, heat, telephone service and office equipment; and stationery, stenographic, clerical, mailing and messenger services in connection with such office; and to pay the salaries of all of the Fund's executives, and to pay all promotional, travel, and entertainment expenses relating to Fund sales. For the past three years management fees paid by

the Fund to its Manager-Adviser, Chestnutt Corporation, were: 1970—$1,175,251; 1971—$1,243,301; and 1972—$1,165,812.

Unless cancelled or superseded as set forth above, the present advisory agreement will continue in effect for two years from September 1, 1972 and thereafter only so long as it is approved at least annually by a majority of the Directors who are neither parties to such contract nor "interested persons" (as defined in the Investment Company Act of 1940, as amended) of any such party, and either (a) the Board of Directors of the Fund or (b) by a vote of holders of a majority of the outstanding shares of the Fund.

Approval of the Terms of New Advisory Agreement

As a result of cost increases over which neither the Fund nor the Adviser can exercise control, the Fund and the Adviser have determined that the 1% annual expense ratio limitation in the current Investment Advisory Agreement shall be increased to 1½%. No increase in the fees paid or payable to the Adviser is proposed. The aggregate of annual operating costs, including the fee of the Adviser, will be limited to 1½% of average monthly net assets in the contract. Heretofore, the Advisory Contract required the Adviser to reimburse the Fund to the extent that total annual expenses (exclusive of interest and taxes) exceeded 1% of average monthly net assets. Under the new agreement, no reimbursement from the Adviser would be required unless and until total annual expenses of the Fund (again, excluding interest and taxes) exceeded 1½% of average monthly net assets. The Investment Advisory fee schedule would not be changed under the new agreement; however, the higher allowable expense ratio limitation would benefit the Adviser by reducing the risk that some or all of the advisory fee would have to be reimbursed to the Fund due to an increase in rates for other expenses or changes in the average account size of American Investors Fund shareholders. No higher fees or costs would have been incurred by the Fund had the proposed new Agreement been in effect in 1972.

The contract provides that the total expenses of the Fund (exclusive of interest and taxes but including the advisory fee) shall not be more than 1½% of the average monthly net assets of the Fund. The Board of Directors of the Fund has agreed, however, that should the Fund register its shares for sale in states which impose a more stringent expense limitation, the Adviser will reimburse the Fund for expenses above the limitation imposed by such states. The Board of Directors of the Fund and the Adviser contemplate making undertakings to certain states in which Fund sales are being made, which undertakings would require the Adviser to reimburse the Fund to the extent that total expenses of the Fund (exclusive of interest and taxes) exceed 1½% of the first $30 million and 1% of the excess over $30 million. However, no assurance can be given that the annual expense ratio will in fact be at a level less than 1½% of average monthly net assets.

The proposed new Agreement appears as pages 16-20 of this Proxy Statement. Approval of the new Investment Advisory Agreement could, to the extent deemed appropriate by defense counsel, be used as a defense in the Fogel Litigation described in this Proxy Statement at pages 9 and 10. All provisions of the proposed Investment Advisory Agreement are the same as those contained in the current Agreement with the exception of the effective date and the change in the expense ratio limitation.

To be adopted, the new Agreement must be approved by a majority of directors who are not parties to such Agreement or interested persons of any such party and must be authorized by a vote of a majority of the outstanding shares of the Fund; by definition contained in the Investment Company Act of 1940 this means a vote of (a) holders of 67% or more of the shares of the Fund present if holders of more than 50% of the outstanding shares of the Fund entitled to vote at the meeting are present in person or by proxy, or (b) holders of more than 50% of the outstanding shares of the Fund entitled to vote at the meeting, whichever is less.

Ratification of Selection of Independent Accountants

The Board of Directors has selected Price Waterhouse & Co., independent accountants, as auditors of the Fund for the year 1973, subject to ratification or rejection at this annual meeting.

Price Waterhouse & Co. has no other relationship with the Fund except as independent accountants. The employment of Price Waterhouse & Co. is conditioned upon the right of the Fund, by vote of holders of a majority of the outstanding stock at any meeting called for the purpose, to terminate such employment forthwith without any penalty.

Other Business

The management does not know of any other business which will be presented for action at the meeting. If business other than the above mentioned is brought before the meeting, those who shall act as proxies at the meeting will vote the proxy according to their best judgment.

Brokerage Commissions

A brokerage commission is a charge made by a broker for acting as agent in the purchase or sale of a security. Because the Fund buys and sells securities it must pay the broker the commissions charged by him in order to accomplish the transaction. A broker-dealer acting as principal buys or sells a security at a net price which does not include a separately stated commission. The Fund transacts portfolio business on either basis depending upon which method results in the most favorable overall price or execution.

On trades that are accomplished on a national securities exchange the broker charges a standard minimum commission rate based on the dollar value of the order up to $300,000 (currently); on any excess the Fund negotiates the lowest commission charge practicable. Warren K. Greene, Vice President of the Fund, is primarily responsible for placing orders to execute the Fund's portfolio transactions and negotiating any commission charge on transactions over $300,000. Stock selection decisions are primarily the responsibility of George A. Chestnutt, Jr.

Thus, under present stock exchange practices approved by regulatory authorities, the Fund is unable to achieve savings on the portions of orders subject to fixed commissions while, concurrently, government authorities differ as to the legality of fixed commissions, which commissions and practices are also before the courts and are the subject of pending legislation.

There are scores of brokers actively seeking the Fund's portfolio business. Nearly all of them proffer opinions, information, and interpretations of information. Since the Fund's investment decisions are primarily influenced by technical market performance information generated internally by the adviser, the vast majority of opinions and information are of little or no value to the Fund or to the Adviser in making portfolio decisions. The evaluation of such opinions and information involves additional work by the Adviser with related costs, including analysis of the extent to which present security prices may already discount the same or similar opinions. *Opinions or information from brokers are in addition to and not in lieu of services required to be performed by the Adviser under its contract with the Fund.*

The Fund places orders for transactions in portfolio securities with brokers or dealers providing the most favorable prices and executions available. Speed and accuracy in obtaining market quotations, promptness in execution of orders at minimum commission rates, and prompt reporting of executions are absolutely essential. Orders are placed so as to maximize total proceeds on sales of portfolio securities and to minimize the total cost on purchases. In connection with over-the-counter transactions, the Fund deals directly with market makers, except in instances where the Fund believes better prices or executions are available elsewhere. Officers of the Fund call upon their experience and judgment in selecting a particular broker to execute a specific type of order in a specific way. The Fund uses many different brokers located throughout the United States. Many of these brokers have shown a personal interest in the affairs of the Fund; some of them have assisted in the sale of Fund shares; some have furnished opinions or helpful information; but the Fund is under no obligation to any broker. Kinds of opinions or information that may be taken into account by the Fund's officers in placing orders for portfolio trans-

actions include quick, accurate quotations and data as to the size of the market; data on money statistics; earnings projections, dividend prospects; probable sellouts, mergers, consolidations, and liquidations; general tape action, volume of shares, blocks recently traded or to be traded, who the buyers and sellers are believed to be, and other information as to the state of the market at a particular moment.

Brokerage commissions on purchases and sales of the Fund's portfolio securities amounted to $2,059,234 in 1970, $1,667,690 in 1971, and $884,912 in 1972. Included in the above amounts are brokerage commissions of $83,308 in 1970, $86,481 in 1971 and $26,623 in 1972 to Vilas & Hickey (the wife of a registered representative of which firm owned 6% of the voting securities of the adviser).

The purchase and sale of portfolio securities have resulted in the following portfolio turnover rates; 93.1% in 1970, 73.3% in 1971 and 56.6% in 1972.

Litigation

Directors of the Fund and the adviser, Chestnutt Corporation, are defendants and the Fund is a nominal defendant in two derivative actions brought in January, 1967, and July, 1968, respectively, in the United States District Court for the Southern District of New York (67 Civ. 60 and 68 Civ. 2855) by joint shareholders, Rosalind Fogel and Gerald Fogel, holders of 280 and a fraction shares. The first action alleges, among other things, that the investment advisory fees are excessive and that by reason of brokerage commissions (which were the standard minimum stock exchange commissions) of Jesup & Lamont, The Fund of Funds Ltd. in effect received a rebate and thus purchased shares of the Fund at prices different from the public offering price described in the Prospectus. The action is for an injunction and seeks to have the directors of the Fund, the management corporation, The Fund of Funds and its affiliate I.O.S. Ltd. (S.A.), and Jesup & Lamont restore to the Fund the brokerage commissions paid to Jesup & Lamont and to have such defendants account for, and pay to, the Fund the advisory fees received by them since 1963. The second action alleges, among other things, that the management corporation, by the use of reciprocal brokerage, give-ups, and mark-ups and mark-downs in over-the-counter transactions, received compensation in excess of the amounts provided for in the investment advisory contract, and that such alleged excess compensation should be recaptured for the benefit of the Fund and seeks an injunction in addition to damages for failure to secure such recapture. No recovery is sought from the Fund in either action. Nevertheless, this litigation will result in additional expenses to the Fund by way of legal services and by way of probable reimbursement of expenses incurred by Officers and Directors in defending the suit. It is not possible at this time to anticipate the total amount

of such expenses. In the opinion of Counsel to the Investment Adviser, the suits have no merit.

On September 24, 1970, a suit was filed (Blank, et al. v. Talley Industries, et al., Southern District of New York, 70 Civ. 4144) against 25 defendants, including the Fund, alleging that Talley Industries, Inc., its accountants, Peat, Marwick, Mitchell & Co., Smith, Barney & Co., Inc., Lehman Brothers, M. Kimelman & Co., the Fund, and a number of individuals (including the Fund's President) violated securities laws and common law duties in connection with the merger of General Time Corporation into Talley Industries, Inc. and transactions in stock of General Time Corporation. The Fund has been advised by Counsel that valid defenses exist to the claims and the suit against the Fund and its President is without merit. However, the Fund will incur expenses in connection with the defense of this suit and any indemnification of its President in an amount which cannot be ascertained at this time.

By order of the Board of Directors,

George A. Chestnutt, Jr.
President

Dated: June 21, 1973

The following statement is not a balance sheet of American Investors Fund, Inc., but is a consolidated balance sheet of the investment adviser, Chestnutt Corporation, as required to be included in the Proxy Statement by Rule 270.20a-2(a)(9) of the regulations issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

CHESTNUTT CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
December 31, 1972

ASSETS

Current Assets:	
Cash	$ 5,840
Marketable securities, at cost which approximates market value	282,196
Accounts receivable:	
American Investors Fund, Inc. (Note 2)	281,830
Other (including federal income tax refunds due of $35,169)	76,382
Receivable from officer (Note 8)	100,000
Prepaid expenses	8,511
Total current assets	754,759
Property and Equipment, at cost:	
Land	388,477
Buildings	547,539
Leasehold improvements	11,800
Furniture, fixtures and equipment	268,242
	1,216,058
Less—Accumulated depreciation and amortization (Note 1)	438,999
	777,059
Future Income Tax Benefits (Note 1)	35,905
Goodwill, Copyrights, Methods, Calculations and Procedures	1
	$1,567,724

LIABILITIES AND SHAREHOLDERS' EQUITY

Current Liabilities:	
Current portion of long-term debt (Note 3)	$ 26,881
Notes payable to bank—interest at ¼% above the prime lending rate	264,000
Accounts payable	66,730
Accrued liabilities	56,175
Estimated taxes on income (Notes 1 and 5)	19,204
Deferred income (Note 1)	51,812
Total current liabilities	484,802
Long-Term Debt (Note 3)	317,055
Shareholders' Equity (Note 4):	
Common stock, without par value: 250,000 shares authorized, 189,000 shares issued	14,463
Retained earnings	759,564
	774,027
Less—408 shares of common stock in treasury, at cost	8,160
	765,867
Commitments and Contingent Liabilities (Notes 6 and 7)	
	$1,567,724

CHESTNUTT CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED BALANCE SHEET

Note 1 — Summary of Accounting Policies:

Principles of consolidation

The accompanying balance sheet includes the accounts of Chestnutt Corporation and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Depreciation and amortization

Depreciation and amortization are computed for financial statement purposes principally on the sum-of-the-years' digits method over the following estimated useful asset lives:

Buildings	10 to 40 years
Furniture, fixtures and equipment	5 to 10 years
Leasehold improvements	5 years

Future income tax benefits

In some instances, depreciation and amortization are computed for income tax purposes over longer asset lives than those utilized for book purposes, resulting in an excess of book over tax depreciation and amortization.

Deferred income

Deferred income arises from advance billings for management advisory fees and service subscriptions.

Note 2 — Investment Advisory Agreement with American Investors Fund, Inc.:

The advisory fee ($1,165,812 in 1972) from American Investors Fund, Inc., with which the principal officers of the corporation and three of the four directors are affiliated, was earned pursuant to an investment advisory agreement. The investment advisory agreement includes, among other things, a provision for the payment by the Fund of a fee determined

on the basis of the net assets of the Fund at the end of each quarter, at ¼ of the following annual rates:

Annual Rate	Net Assets
0.8%	First $ 50 million
0.6%	Next $ 50 million
0.4%	Next $200 million
0.35%	Next $200 million
0.3%	Over $500 million

The corporation has agreed to refund each year any amount by which total expenses of the Fund, exclusive of taxes and interest, exceed 1% of average monthly net assets of the Fund for such year. No refund has been required under this provision.

Note 3 — Long-Term Debt:

Long-term debt at December 31, 1972 is summarized as follows:

	Annual Interest Rate	Amount
Mortgages:		
Quarterly payments of $5,000, including interest, required to September 1, 1980, when remaining principal of $111,212 becomes payable. Secured by corporate office property (net book value—$546,499)	5½ %	$198,336
Annual principal instalment of $5,000 required. Secured by property adjacent to corporate office property (net book value—$26,000)	5¾ %	15,000
		213,336
Serial income bonds due in annual principal amounts of $10,200 until 1976 when the balance of $100,000 is payable	6%	130,600
		343,936
Less—Amounts due within one year		26,881
		$317,055

The payment of interest on the serial income bonds in any year may be limited by the corporation to the net income of the preceding year. However, in the event of nonpayment, interest is cumulative to the extent of 18% of the principal amount of the bonds outstanding. Interest is payable annually on February 1 and has been paid through February 1, 1973.

Note 4 — Stock Options:

At December 31, 1972 under a qualified stock option plan, options to purchase 7,700 shares were outstanding at prices of $20.00 per share (4,700 options expiring in March 1976) and $25.00 per share (3,000 options expiring in February 1975). No options were exercised in 1972 and at December 31, 1972 options to purchase 1,300 shares were available for future grant.

Note 5 — Federal Income Taxes:

At December 31, 1972 the company had approximately $179,000 available through 1975 to offset future realized capital gains. The company recognizes the investment tax credit for both income tax and financial statement purposes in the year the asset is put into use (flow-through method).

Note 6 — Commitments:

The corporation leases office space for the subscription and mailing department at an annual rental of $7,200. The lease agreement expires in April 1974.

The corporation has entered into an agreement with a former officer providing for monthly payments of $2,500 through February 1973 and at the annual rate of $5,000 from March 1973 through February 1978. The agreement also provides, under certain conditions, for the payments to be made to the wife of the former officer in the event of his death or incapacity.

Note 7 — Contingent Liabilities:

The corporation and one of its subsidiaries, Chestnutt Management Corporation, are defendants in three civil actions alleging, in general, failure to properly manage customers' accounts. In the opinion of counsel the results of such litigation should not have a material adverse effect on the consolidated financial position or consolidated results of operations of the corporation.

Refer also to "Litigation" on page 9 of this Proxy Statement.

Note 8 — Receivable From Officer:

On December 28, 1972 the Board of Directors of Cascade Airways Inc. agreed that, in consideration of at least $100,000 advanced to Cascade, Chestnutt Corporation, or another corporation designated by it, shall acquire not less than 80% of the voting securities and equity of Cascade. Pending completion of a preacquisition audit, the advance, which amounted to $100,000 at December 31, 1972 and since has been increased to $150,000, has taken the form of a loan by Chestnutt Corporation to its president, with interest at the prime lending rate, collateralized by 147,200 shares of Cascade and 9,460 shares of Chestnutt Corporation stock. To date, Chestnutt has not exercised its right to acquire at least 80% of Cascade.

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Shareholders of
Chestnutt Corporation

In our opinion, the accompanying consolidated balance sheet presents fairly the financial position of Chestnutt Corporation and its subsidiaries at December 31, 1972 in conformity with generally accepted accounting principles consistently applied. This opinion is based on an examination which was made by us in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

PRICE WATERHOUSE & CO.

Stamford, Connecticut
March 22, 1973

EXHIBIT I

INVESTMENT ADVISORY AGREEMENT
between
AMERICAN INVESTORS FUND, INC.
and
CHESTNUTT CORPORATION

AGREEMENT made as of September 1, 1973, by and between AMERICAN INVESTORS FUND, INC., a corporation organized and existing under the laws of the State of New York (herein called the "Corporation") and CHESTNUTT CORPORATION, a corporation organized and existing under the laws of the State of Connecticut (herein called the "Investment Adviser").

WHEREAS, the Corporation is engaged in business as an open-end management investment company, and is registered under the Investment Company Act of 1940, and

WHEREAS, the Investment Adviser is engaged in the business, among other things, of rendering research, statistical, and advisory services to investors, and is registered under the Investment Advisors Act of 1940.

NOW, THEREFORE, in consideration of the premises and of the mutual promises hereinafter set forth, the parties agree as follows:

1. The Corporation hereby retains the Investment Adviser to render research, statistical and advisory services to the Corporation, and to assist and guide the officers and directors of the Corporation in the investment administration of its resources, so long as this agreement shall remain in effect.

2. The Investment Adviser hereby accepts such retainer and agrees to render such services to the best of its ability.

3. The Corporation will, from time to time, deliver to the Investment Adviser detailed statements of the investments and resources of the Corporation and information as to its investment problems.

4. The Investment Adviser shall, from time to time, to the extent reasonably required in the conduct of the business of the Corporation and upon its request, make available to the Corporation research, statistical, and advisory reports and charts upon the industries, businesses, corporations, and securities as to which such requests shall be made, whether or not the Corporation shall at the time have any investment in such industries, businesses, corporations, or securities.

5. The Investment Adviser shall, from time to time, taking into consideration the investment requirements of the Corporation, recommend to the Corporation that it adopt specified investment policies, or that it purchase, sell, retain, or exchange designated securities; and the Corporation, acting on such recommendations, may, but shall not be required to, adopt such policies or purchase, sell, retain, or exchange such securities.

6. The officers and advisory personnel of the Investment Adviser shall be available at all times upon reasonable notice or consultation with the directors and officers of the Corporation in connection with any of the Corporation's investment problems.

7. The Investment Adviser shall furnish to the Corporation such office space as may be necessary for the suitable conduct of the Corporation's business and all necessary light, heat, telephone service, office equipment and stationery and stenographic, clerical, mailing and messenger service in connection with such office; and pay the salaries of all of the Fund's executives, and pay all promotional, travel, and entertaining expenses relating to Fund sales.

8. The Investment Adviser shall not be liable for any loss sustained by reason of the adoption of any investment policy or the purchase, sale, or retention of any security on the recommendation of the Investment Adviser, whether or not such recommendation shall have been based upon its own investigation and research or upon investigation and research made by any other individual, firm, or corporation, if such recommendation shall have been made and such other individual, firm, or corporation shall have been selected with due care and in good faith; but nothing herein contained shall be construed to protect the Investment Adviser against any liability to the Corporation or its security holders by reason of wilful misfeasance, bad faith, or gross negligence in the performance of its duties or by reason of its reckless disregard of its obligations and duties under this Agreement.

9. The Corporation agrees to pay to the Investment Adviser and the Investment Adviser agrees to accept as full compensation for all services rendered by the Investment

Adviser hereunder for each of the Corporation's fiscal quarters on the last day of each quarter, a fee in an amount determined by applying the following quarterly rates to the value of the Corporation's net assets at the end of each calendar quarter:

Quarterly Rate	Equivalent Annual Rate	Net Assets of the Corporation
0.2 of 1%	0.8 of 1%	on the first $ 50 million
0.15 of 1%	0.6 of 1%	on the next $ 50 million
0.1 of 1%	0.4 of 1%	on the next $200 million
0.0875 of 1%	0.35 of 1%	on the next $200 million
0.075 of 1%	0.3 of 1%	on net assets in excess of $500 million

provided, however, that the annual fee of the Investment Adviser shall not be more than an amount which, when added to the other charges of the Corporation (exclusive of interest and taxes) shall result in total charges per annum to the Corporation inclusive of the fee of the Investment Adviser (but exclusive of interest and taxes) of 1½% of the value of the Corporation's average monthly net assets for any year. For the first quarter in which this Agreement shall be in effect, the foregoing computations shall be made as if this Agreement was in effect for the entire quarter. For the quarter and the year in which this Agreement terminates, there shall be an appropriate proration on the basis of the number of days that this Agreement is in effect during the quarter and the year respectively. If, pursuant to the Certificate of Incorporation of the Corporation, the net assets are not required to be determined on any particular business day, then for the purpose of the foregoing computations, the net assets last determined shall be deemed to be the net assets as of the close of business on that day.

10. The Investment Adviser agrees that it shall not take any long or short position in the stock of the Corporation but this prohibition shall not:

(a) prevent the Investment Adviser, acting as or for the distributor of the stock of the Corporation, from purchasing shares of such stock, if orders to purchase such shares are placed by the distributor upon receipt of purchase orders for such shares and are not in excess of the purchase orders received by the distributor;

(b) prevent the Investment Adviser, acting as or for a distributor of the stock of the Corporation, from maintaining a market for such stock in the capacity of agent for the Corporation; or

(c) prevent the purchase by or for the Investment Adviser of shares of the stock of the Corporation at the price at which such shares are available to the public at the moment of purchase; provided that such purchase be made for investment purposes only.

11. This agreement shall remain in effect for a period of two years from the date hereof unless sooner terminated as hereinafter provided. This agreement shall continue in effect from year to year thereafter, subject to the provisions for termination and all of the other terms and conditions hereof, but only so long as such continuation shall be specifically approved at least annually by a majority of Directors who are neither parties to such contract nor "interested persons" of any such party, and either (a) the Board of Directors of the Fund or (b) by a vote of holders of a majority of the outstanding shares of the Fund.

12. Nothing in this agreement shall prevent the Investment Adviser or any director, officer or employee thereof from acting as Investment Adviser for any other person, firm, or corporation and shall not in any way limit or restrict the Investment Adviser or any of its directors, officers or employees from buying, selling or trading in any securities for its or their own accounts or for the accounts of others for whom it or they may be acting.

13. This agreement cannot be amended, transferred, assigned, sold or in any matter hypothecated or pledged (herein called "amended, assigned or pledged"); in the event of cancellation or expiration of this agreement or other management contract, no new management contract shall become effective without the affirmative vote of holders of a majority of the shares of the Fund. This agreement shall automatically and immediately terminate in the event it is amended, assigned or pledged.

14. This agreement may be terminated (a) by the Corporation, upon sixty (60) days' notice in writing to the Investment Adviser without the payment of any penalty, provided such termination be authorized by resolution of the Board of Directors of the Corporation or by vote of holders of a majority of the shares of the Fund; and (b) by the Investment Adviser, upon sixty (60) days' notice in writing to the Corporation, likewise without penalty.

15. For the purpose of this agreement, the "affirmative vote of holders of a majority of the shares of the Fund" means the affirmative vote, at a duly called and held meeting of shareholders of the Fund, (a) of the holders of 67% or more of the shares of the Fund present (in person or by proxy) and entitled to vote at such meeting, if the holders of more than 50% of the outstanding shares of the Fund entitled to vote at such meeting are present in person or by proxy, or (b) of the holders of more than 50% of the outstanding shares of the Fund entitled to vote at such meeting, whichever is less.

For the purposes of this agreement, "interested person" shall have the meaning defined in the Investment Company Act of 1940, as in force at the time, or in any act amendatory thereof or in substitution therefor, as in force at the time.

For the purposes of this agreement, "assignment" shall have the meaning defined in the Investment Company Act of 1940, as in force at the time, or in any act amendatory thereof or in substitution therefor, as in force at the time.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first above written.

AMERICAN INVESTORS FUND, INC.

By .....
President

Attest:

.....
Secretary

CHESTNUTT CORPORATION

By .....
President

Attest:

.....
Secretary